

Department of Finance – Housing Frequently Asked Questions

Q. Is the low and moderate income housing set-aside required or an enforceable obligation under AB X1 26?

A. The low-moderate income housing set-aside is not a continuing obligation. Thus payments that would have been made into the fund in the future had the redevelopment agency continued to exist should not appear on the Recognized Obligation Payment Schedule (ROPS). While redevelopment agencies may have deposited property tax into their Low and Moderate Income Housing Fund (Low-Mod Fund) prior to February 1, 2012, no new obligations should have been made against those funds after June 28, 2012. Funds which would have been deposited into the Low-Mod Fund to pay for enforceable housing obligations, such as payments for housing bond debt service, should be placed on the ROPS.

Q. Do the housing assets transferred to the sponsoring agency or local housing authority include funds or other monetary assets in the Low and Moderate Income Housing Fund?

A. Unencumbered funds in the Low and Moderate Income Housing Fund are specifically provided to the taxing agencies for distribution as property tax in Section 34176. Funds that are encumbered by enforceable obligations may be retained by the successor agency to satisfy those obligations. With approval of the oversight board, both obligations and funds to satisfy them may be transferred to the housing successor. The definition of what is an enforceable obligation for housing is the same as it is for all other obligations of the former redevelopment agency. For example, plans, resolutions, project designations, or other acts of the agency proposing to construct, buy, lease, or remodel housing, that were not specifically contracted for with an external party prior to June 28, 2011, are not enforceable obligations. No obligations should have been created against the low-moderate housing fund after June 27, 2011.

Q.. For purposes of AB X1 26, what is a housing asset that can transfer to the housing successor?

A. Housing assets to be transferred to the housing successor agency must be approved by the oversight board and thus are also subject to review by Department of Finance. In our view, housing assets are:

1. Any real property, interest in, or restriction on the use of real property, whether improved or not, and any personal property provided in residences (such as furniture and appliances) that was acquired for housing purposes (either by purchase or through a loan) in whole or part with funds from the Low and Moderate Income Housing Fund (Low-Mod Fund). The share of the asset value that should be considered housing assets should be proportionate to the share of ownership of the asset that is held by the successor agency or if ownership shares are not defined by contract, in proportion to funding provided by the redevelopment agency in proportion to the total funding for the project.
2. Any funds that are encumbered by an enforceable obligation to build or acquire low and moderate income housing as low and moderate income housing are defined by the Community Redevelopment Law. For this purpose, an enforceable obligation is defined the same way it is for AB X1 26 generally.

3. A stream of repayments from a loan of Low-Mod Fund money, if the repayments are encumbered by enforceable obligations to provide low-mod housing or for enforceable obligations associated with low-mod housing. Any funds derived from rents or operation of properties with enforceable income restrictions are presumptively encumbered for maintenance and operation of the housing, monitoring, and enforcing the affordability restrictions, and enforcing other terms and conditions associated with the financial participation by the redevelopment agency. Otherwise they are surplus funds that should be provide to taxing agencies.
4. A stream of rents or other payments from housing tenants or operators of low-mod housing that are used to maintain, operate and enforce the affordability of low-mod housing or for enforceable obligations associated with low-mod housing.

We do not believe that financial assets of the Low-Mod Fund, such as deferred payments due to the Fund, and any repayments of SERAF loans, are housing assets. They are assets of the Low-Mod Fund and should be transferred to the taxing agencies.

We expect that most low-mod housing acquired with redevelopment funds will have long-term or permanent affordability covenants on it and thus will have little or no market value. While we expect that most housing built or acquired with low-mod funds will have long-term restrictions on rents and sales that were required by providers of other financing involved in the projects, there may be instances where this is not the case. If the redevelopment agency had sole title to the housing and it was not built with any low-mod funds and thus is a market rate property, any rental revenue, or proceeds from sale, and the property itself, are not housing assets that transfer to the housing successor.

We also expect that some projects involving housing are mixed use and could include governmental-use property, commercial property, market rate housing, and housing that meets the Community Redevelopment Law definition of low-mod housing. While we would expect that significant amounts of low-mod funds were not used to acquire commercial property or governmental-use property per se, there could be situations where title to the various types of properties is in the name of the redevelopment agency. Property sale proceeds or revenue streams should be apportioned between the low-mod fund and other funders, including the redevelopment agency general fund. Such assets may transfer to the housing successor only with approval of the oversight board. The successor agency may prefer to hold and manage the asset.